

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS (Agreement) is entered into between the Seattle Times Company, and all of its agents, employees and representatives, (hereinafter referred to collectively as “Plaintiff”) and the City of Seattle, and all of its agents, employees, and representatives (jointly referred to as “the City”). Plaintiff and the City are referred to collectively as the “Parties.”

RECITALS

A. The Public Records Act, RCW 42.56 *et seq* (“PRA”) applies to records of the City of Seattle. Per office practice, the Mayor’s Office conducts periodic refresher trainings for its personnel on PRA issues and this Settlement Agreement documents several specific topics planned for the next Public Records Act refresher training.

B. Plaintiff filed a Complaint against the City on or about September 17, 2018, with allegations that the City violated the PRA in its response to a July 26, 2017 public records request submitted by Plaintiff (via reporter Jim Brunner). The City assigned identification number C015977-072617 to Mr. Brunner’s PRA request. That Complaint is now pending in the King County Superior Court, Cause No. 18-2-23240-6 SEA (“the Complaint”);

C. Plaintiff, through its reporter Lewis Kamb, filed a public records request on or about June 11, 2018, which was processed by the City as C028745-061118. Through reporter Scott Greenstone, Plaintiff also filed a records request on May 18, 2018 which was processed by the City as C027884-051818. The statutory limitations period on C028745-061118 and C027884-051818 has not yet run.

D. C028745-061118 and C027884-051818 will be referred to collectively hereinafter as “the Requests.” The City provided records and, where appropriate, exemption logs and then closed the Requests; additional records were identified and disclosed with respect to some of the Requests after the Requests had been closed.

E. As attested to by the signature below of a representative of the City, all existing requested records for the Complaint and the Requests have been provided to the best of the City’s knowledge.

F. It is understood and agreed to by the Parties that this settlement is a compromise of disputed claims, and the payments are not to be construed as an admission of liability on the part of the City, by whom liability is expressly denied. Moreover, the monetary payments in this Agreement do not indicate or otherwise imply that the City believes or agrees that there would have been any legal or factual basis for a Court to order the City to pay penalties, fees and/or fines under the PRA.

G. The Parties desire to enter into this Settlement Agreement in order to provide payment in full settlement and discharge of all claims which are, or might have been, the subject

matter of the Complaint or related to any of the Requests, upon the terms and conditions set forth below.

AGREEMENT

The Parties agree as follows:

Plaintiff's Release and Discharge

1.1 In consideration of the payment and other terms set forth in Section 2, Plaintiff hereby completely releases and forever discharges any demands, obligations, actions, causes of action, rights, damages, costs (including payment of attorney fees), losses of services, expenses and compensation of any nature whatsoever, whether based on RCW 42.56 and/or a tort, contract, or statutory theory of recovery, which the Plaintiff now has against the City and/or which are the subject of the Complaint which are in any way related to the Requests, the City's response to the Requests, any documents produced in response to the Requests or as a result of this Settlement Agreement, or any claim of Plaintiff's agents, employees and/or representatives, which have resulted from the alleged acts or omissions of the Defendant with respect to any aspect of the Requests (including but not limited to any aspect of the City's handling of or response to the Requests) through the date of execution of the agreement.

1.2 This release and discharge shall also apply to the City's past, present and future officers, attorneys, agents, servants, employees and assigns.

1.3 This release, on the part of Plaintiff, shall be a fully binding and complete settlement between the Plaintiff and the City. As a consequence of this Agreement, Plaintiff understands and agrees that the City will file with the Court a joint stipulation by the Parties seeking a dismissal, with prejudice, of the Complaint and that no payments shall be made or documents released until the Dismissal Order is entered.

1.4 Plaintiff acknowledges and agrees that the release and discharge set forth above is a general release. Plaintiff expressly waives and assumes the risk of any and all claims for damages which exist as of this date, but of which Plaintiff does not know or suspect to exist, and which, if known, would materially affect its decision to enter into this Agreement regarding the Complaint and the Requests. Plaintiff further agrees that Plaintiff has agreed that the payment of the sums specified herein and other terms are a complete compromise of matters involving disputed issues of law and fact. Plaintiff assumes the risk that the facts or law may be other than it believes. It is understood and agreed to by the Parties that the payments are not to be construed as an admission of liability on the part of the City, by whom liability is expressly denied.

1.5 Plaintiff agrees that as consideration for acceptance of the payment of the \$17,000.00 discussed in Section 2, below, after full execution of the Agreement, the City will file a joint, stipulated Order of Dismissal With Prejudice dismissing all legal claims Plaintiff may have against Defendant arising out of the Complaint, Case No. 18-2-23240-6 SEA.

1.6 Plaintiff further agrees and understands that Plaintiff will not resubmit, in whole or in part, a new PRA request seeking the same information or documents sought in the Complaint and the Requests, nor will any agent or assign of Plaintiff do so on Plaintiff behalf, although Plaintiff may seek related information on the same subjects as those covered by the Complaint and the Requests. Nothing in this term prevents Plaintiff from asking the City to provide any later discovered documents of which it becomes aware.

1.7 Plaintiff expressly understands and agrees that the City has always, and continues to, deny that it violated the PRA and that the payment in Section 2.0 below is not in any manner a payment of penalties and/or fines for violating the PRA and shall not be characterized as such by any party to the Agreement.

2.0 Payments and Other Agreements by The City of Seattle

In consideration of the release set forth above, the City agrees to pay to Plaintiff, as reimbursement for costs, the sums outlined in Section 2.1, below:

2.1 The City shall pay to Davis Wright Tremaine LLP, counsel of record for Plaintiff, the sum total of seventeen thousand dollars and no cents (\$17,000.00), characterized as attorney's fees related to the Requests and Complaint, as a settlement of all claims as set forth above, inclusive of any additional expenses, costs and/or attorney fees. This amount shall be due and must be placed in U.S Mail within thirty (30) days upon execution of the Agreement, except that no payments shall be made until a Dismissal Order has been entered by the Court and a completed W-9 has been provided to the City for the entity receiving payment and a reasonable amount of processing time has been given to the City subsequent to the provision of these forms.

2.2 Subsequent to the entry of the Order dismissing with prejudice the Complaint, the City of Seattle agrees to the following:

1. Provide, within 30 days of entry of the Order dismissing the Complaint, a declaration verifying that City IT personnel conducted forensic analysis in an attempt to retrieve the Deputy Mayor Shefali Ranganathan's text messages in response to Request C028745-061118.
2. Provide, within 30 days of entry of the Order dismissing the Complaint, several additional text messages identified in the search of then-Mayor Edward Murray's personal phone which the then-Mayor had not designated as public records.
3. Consistent with current office policy, the Mayor's Office conducts periodic refresher trainings for its personnel. The next Public Records Act training, anticipated to occur in 2019, will include refresher training on the following topics (which are also reflected in the City's updated Smart Phone Policy, which is currently in the final review stage):
 - a. Employee responsibility to retain public records, including those on City-owned or personal smartphones and mobile devices, and information about how to determine what is transitory;

- b. The City's longstanding expectation that City business will be conducted on City owned devices whenever possible;
- c. City officials' and employees' preservation and search obligations, in instances when private devices are used for City business;
- d. the expectation that mobile device users will use apps approved by Seattle IT and consistent with City policy;
- e. The discussion of "transitory" in the training will be consistent with statutes and caselaw as currently reflected in the definition of that term found in the existing applicable record retention schedules; and
- f. Consistent with the City's existing approach to record retention, the training will state that substantive (non-transitory) City business should not be conducted on communication tools that automatically delete or are otherwise inaccessible.

3.0 Attorney's Fees

3.1 Except as provided for in Section 2.1 above, each party hereto shall bear its own attorney's fees and costs arising from this Complaint.

3.2 In the event a suit is brought to enforce any provision of this Agreement, the prevailing party shall be awarded all costs incurred in prosecuting or defending the action, including reasonable attorney and paralegal fees.

4.0 Representation of Comprehension of Document

In entering into this Agreement, Plaintiff represents that Plaintiff was represented by an attorney, and either consulted with that attorney or voluntarily decided not to do so; the terms of this Agreement have been completely and carefully read by Plaintiff; and that the terms of this Agreement are fully understood and voluntarily accepted by Plaintiff.

5.0 Warranty of Capacity to Execute Agreement

Plaintiff represents and warrants that no other person or entity has, or has had, any interest in the claims, demands, obligations, or causes of action referred to in this Agreement, except as otherwise set forth herein; that Plaintiff has the sole right and authority to receive the sums specified in it; and that Plaintiff has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Agreement. The individuals signing this Agreement each represent and warrant that they are authorized to execute this Agreement on behalf of Plaintiff and the City, respectively.

6.0 Governing Law

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington.

7.0 Additional Documents

All Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

8.0 Taxability of Settlement

The City of Seattle takes no position as to any taxes which may be due and has advised Plaintiff that the City will not be responsible for making estimated tax payments on this settlement. The City has advised Plaintiff that it will report the settlement in its entirety to the Internal Revenue Service by issuance of a 1099 form.

9.0 Entire Agreement and Successors In Interest

This Agreement contains the entire agreement between the Parties with regard to the matters set forth in it and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, and successors and assigns of each.

10.0 Severability

It is further understood and agreed that if any of the provisions of this Agreement are held to be invalid or unenforceable, the remaining provisions shall nevertheless continue to be valid and enforceable. Notwithstanding the foregoing, if the release contained in paragraph 1.0 above is declared unenforceable or invalid, the City shall have the option of rescinding this Agreement. If such a rescission occurs, Plaintiff shall re-pay to Defendant all sums paid pursuant to this Agreement.

THIS AGREEMENT CONTAINS A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS AGAINST THE CITY OF SEATTLE (AS SPECIFIED ABOVE) THROUGH THE DATE OF EXECUTION OF THIS AGREEMENT. PLAINTIFF ACKNOWLEDGES THAT PLAINTIFF HAS CAREFULLY READ AND FULLY UNDERSTANDS ALL ASPECTS OF THIS SETTLEMENT AGREEMENT, AND THAT PLAINTIFF HAS NOT RELIED UPON ANY REPRESENTATIONS OR STATEMENT NOT SET FORTH HEREIN OR MADE BY THE CITY OF SEATTLE OR ITS REPRESENTATIVES.

DATED this _____ day of July 2019.

SEATTLE TIMES COMPANY

CITY OF SEATTLE

By: Michelle Matassa Florn By: Michelle Chen

Date Signed: 7/26/19

Date Signed: 7/25/2019